

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	Civil Action No. 07-5036-CV-SW-JCE
Plaintiff,)	
)	
v.)	
)	NATURAL RESOURCE DAMAGES
FAG BEARINGS, LLC,)	CONSENT DECREE
)	
Defendant.)	
_____)	

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior (“DOI”), filed a complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9607. The United States’ complaint alleges that Settling Defendant FAG Bearings, LLC (“Settling Defendant”) is liable under CERCLA for damages for injury to, destruction of, or loss of natural resources resulting from release of hazardous substances at and from the Newton County Wells Superfund Site in Jasper and Newton Counties, Missouri (“the Site”). Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. § 300.600(1) and (2), DOI, through the United States Fish and Wildlife Service (“FWS”), has been delegated authority to act as the Federal Trustee for natural resources impacted by the release of hazardous substance at or from the Site.

B. The Missouri Department of Natural Resources (MDNR) is a co-trustee for natural resources at the Site affected by releases of hazardous substances at the Site. MDNR seeks, in a separate civil action, to recover damages for injury to natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. MDNR has resolved its natural resource damages claims against Settling Defendant in a consent decree lodged with this court in State of Missouri v. FAG Bearings, LLC, No. 3:06-05121 (W.D. Mo. Nov. 27, 2006). The payment of \$130,724.00 required in Paragraph 53 of that consent decree is the same payment required in Paragraph 5(a) of this Consent Decree.

C. By entering into this Consent Decree, Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

D. The United States believes Settling Defendant's obligations under this Consent Decree constitute adequate compensation for Natural Resources Damages arising from the release of hazardous substances at and from the Site.

E. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite natural resource restoration actions to be performed by the Trustees; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and

9613(b). The Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- b. "Consent Decree" means this Consent Decree.
- c. "Day" means a calendar day unless expressly stated to be a working day.

"Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In

computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. “DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.

e. “Effective Date” means the effective date of this Consent Decree as provided by Section XIV of this Consent Decree (Effective Date and Retention of Jurisdiction).

f. “Federal Trustee” means the United States Department of the Interior.

g. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. “Natural Resource” or “Natural Resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State, and the services provided by such resources.

i. “Natural Resource Damages” means any damages recoverable by the United States or the State Trustees on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Site as a result of a release of hazardous substances including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (ii) the costs of restoration, rehabilitation,

or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

j. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

k. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

l. “Parties” means the United States and the Settling Defendant.

m. “Plaintiff” means the United States.

n. “Section” means a portion of this Consent Decree identified by a roman numeral.

o. “Settling Defendant” shall mean FAG Bearings, LLC.

p. “Site” means the Newton County Wells Superfund Site, encompassing approximately 300 acres, located at 3900 Rangeline Road, Joplin, Jasper County, and all contaminated groundwater located beneath the villages of Silver Creek and Saginaw, Newton County, Missouri, where TCE and TCE degradation products attributable to Settling Defendant have come to be located, as depicted generally on the map attached hereto as Exhibit A.

q. “MDNR” means the Missouri Department of Natural Resources.

r. “Subparagraph” means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

s. “Trustees” means DOI and MDNR.

t. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

V. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at and from the Site; (ii) to reimburse natural resource damage assessment costs incurred by the trustees; (iii) to resolve the Settling Defendant’s liability for Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

VI. PAYMENTS BY THE SETTLING DEFENDANT

5. Within 30 days after the Effective Date, the Settling Defendant shall make the following payments, as specified in this Paragraph:

a. Payment for Trustee-Sponsored Natural Resource Restoration Projects.

Settling Defendant shall pay a total of One Hundred Thirty Thousand Seven Hundred and Twenty Four Dollars (\$130,724.00) to the United States for Natural Resources Damages.

Payment shall be made by remittance of a certified, cashier’s or corporate check to:

Department of the Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Avenue
Lakewood, Colorado 80235

The certified check shall reference Account Number 14X5198 (NRDAR) and the Newton

County Wells Superfund Site.

b. Payment for Assessment Costs Incurred by DOI. Settling Defendant shall pay Six Thousand Seven Hundred and Thirty Nine Dollars (\$6,739.00) to the United States for natural resource damage assessment costs incurred by the United States. Payment shall be made by remittance of a certified, cashier's or corporate check to:

Department of the Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Avenue
Lakewood, Colorado 80235

The certified check shall reference Account Number 14X5198 (NRDAR) and the Newton County Wells Superfund Site.

6. Notice of Payment. Upon making any payment under Paragraph 5, shall send written notice that payment has been made to the United States, DOI, and MDNR. The written notice of payment shall reference Account Number 14X5198 (NRDAR) and the Newton County Wells Superfund Site. The written notice shall be addressed to:

For the United States:

Bruce Nessler, Restoration Fund Manager
Natural Resource Damage Assessment and Restoration Program
Mailstop 4449
1849 C Street, NW
Washington, D.C. 20240

Mary Lynn Taylor
US Dept. of the Interior
Office of the Solicitor
Three Parkway Center, Suite 385
Pittsburgh, Pennsylvania 15220

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-07214/1

For the Missouri Department of Natural Resources:

Don Von Dyke, Project Manager
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

Chief Counsel
Agriculture and Environment Division
Attorney General's Office
P.O. Box 899
Jefferson City, Missouri 65102-0176

7. Non-Compliance with Payment Obligations.

a. Interest. In the event any payment required by Paragraph 5 is not made when due, the Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Damages. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 5 is not made when due, the Settling Defendant shall also pay stipulated damages of \$500 per day through the date of full payment.

c. Payment of Interest and Stipulated Damages. Any Interest payments under Subparagraph 7.a shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount.

VII. TRUSTEE-SPONSORED NATURAL RESOURCE
RESTORATION PROJECTS

8. Management and Application of Funds. All funds deposited into the NRDAR Fund under Paragraph 5 shall be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts at the Site. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

9. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees. Settling Defendant shall not be entitled to dispute, in any other forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

VIII. COVENANT NOT TO SUE BY THE UNITED STATES

10. Except as specifically provided in this Section and in Paragraph 13 (General Reservations), the United States covenants not to sue or take administrative action against the Settling Defendant, including officers, directors, employees, successors, or assigns, except to the extent the alleged liability of that person or entity arose independently of the alleged liability and actions of the Settling Defendant, for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Paragraph 5 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations

under this Consent Decree, and the Consent Decree in State of Missouri v. FAG Bearings, LLC, No. 3:06-05121 (W.D. Mo. Nov. 27, 2006).

11. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in a new action for injunctive relief, costs, or Natural Resource Damages, or the restoration, replacement or acquisition of the equivalent of injured, destroyed, or lost Natural Resources resulting from releases or threatened release of hazardous substance at the Site, if, after the effective date of the Consent Decree: (1) conditions at the Site previously unknown to the Trustees are discovered and such conditions cause injury to, destruction of, or loss of Natural Resources; or (2) new information is received by the Trustees that indicates that there is injury to, destruction of, or loss of Natural Resources of the Site of a type unknown to the Trustees at the time of entry of this Consent Decree.

12. For purposes of the previous paragraph, the information and conditions known to the Trustees shall include only that information and those conditions known to the Trustees prior to the date the Consent Decree is signed.

IX. RESERVATION OF RIGHTS BY THE UNITED STATES

13. General Reservations. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all matters not expressly included within Paragraph 10 (Covenant Not to Sue by the United States). Notwithstanding any other provisions of this Consent Decree, the United States reserves all rights against the Settling Defendant with respect to:

- a. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree or any other Consent Decree addressing environmental matters at the Site;
- b. liability for any other costs incurred or to be incurred by the United States that are not within the definition of Natural Resource Damages;
- c. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site;
- d. liability arising from any disposal of hazardous substances at the Site by the Settling Defendant after the lodging of this Consent Decree; and
- e. criminal liability.

X. COVENANTS BY THE SETTLING DEFENDANT

14. Covenants by the Settling Defendant. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to Natural Resource Damages or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any direct or indirect claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5), relating to Natural Resource Damages; and

c. any direct or indirect claim for reimbursement under the Oil Pollution Act.

15. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

16. Waiver of Certain Claims Against Other Persons. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages, including claims for contribution; provided, however, that Settling Defendant reserves the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against Settling Defendant relating to Natural Resource Damages. Nothing in this Paragraph shall operate to waive or release any claim or action by Settling Defendant under any contract of insurance.

17. Reservation of Rights by Settling Defendant. Settling Defendant reserves, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters expressly reserved by the United States.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any

matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages.

20. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against a Settling Defendant for matters related to this Consent Decree, the Settling Defendant will notify the persons identified in Paragraph 6 in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify the persons identified in Paragraph 6 within 5 days of service or receipt of any Motion for Summary Judgment, and within 5 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. Upon receipt of Settling Defendant’s payments as specified in Paragraph 5 above, Settling Defendant’s obligations to perform or pay under this Consent Decree shall be deemed to have been satisfied, except that all agreements and covenants to refrain from suing or taking other actions remain in effect subject to the conditions thereto.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,

claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the United States set forth in Section VIII.

XII. EFFECTIVE DATE AND RETENTION OF JURISDICTION

23. This Consent Decree shall take effect upon entry by the Court.

24. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

25. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIV. SIGNATORIES/SERVICE

26. The undersigned representatives of the Settling Defendant and the United States each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

27. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

28. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XV. FINAL JUDGMENT

29. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Consent Decree.

30. Each Party shall bear its own court costs and attorneys' fees in connection with this matter, except to the extent such costs are Natural Resource Damages that are paid under this Consent Decree.

31. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Settling Defendant. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED

Date:

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. FAG Bearings, LLC, relating to the Newton County Wells Superfund Site.

FOR THE UNITED STATES OF AMERICA:

MATTHEW McKEOWN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

/s/ Ellen M. Mahan

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section

/s/ Sean Carman

SEAN CARMAN
Environmental Enforcement Section
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Washington, D.C. 20044-7611
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JOHN F. WOOD
United States Attorney
Western District of Missouri

/s/ Cynthia Hyde

CYNTHIA HYDE
Assistant United States Attorney
Western District of Missouri
901 St. Louis, Suite 500
Springfield, Missouri 65806

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. FAG Bearings, LLC, relating to the Newton County Wells Superfund Site.

FOR DEFENDANT FAG BEARINGS, LLC:

March 23, 2007

/s/ Claus Baeur
Claus Baeur
President,
FAG Bearings, LLC

March 23, 2007

/s/ Steven Crow
Steven Crow
Secretary
FAG Bearings, LLC